

Commodity Futures Trading Commission

§ 38.3

SOURCE: 66 FR 42277, Aug. 10, 2001, unless otherwise noted.

§ 38.1 Scope.

The provisions of this part 38 shall apply to every board of trade or trading facility that has been designated as a contract market in a commodity under section 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of parts 36 or 37 of this chapter.

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21, part 40, part 41 and part 190 of this chapter.

[67 FR 62877, Oct. 9, 2002]

§ 38.3 Procedures for designation by application.

(a)(1) *Initial Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(i) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(ii) The application is labeled as being submitted pursuant to this part 38;

(iii) The application includes:

(A) A copy of the applicant's rules and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and the nature of contingency or disaster recovery plans;

(C) A copy of any documents pertaining to the applicant's legal status and governance structure, including governance fitness information;

(D) A copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principal; and

(E) To the extent that any of the items in § 38.3(a)(1)(iii)(A)–(D) raise issues that are novel, or for which compliance with a condition for designation is not self-evident, a brief explanation of how that item and the application satisfies the conditions for designation;

(iv) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(2) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) of this section; provided however, that an application for reinstatement may rely upon previously submitted